

Canada's Insurance Connection

Coping with COVID-19: The Small Business Guide to Reopening, Relief, & Recovery

July 2020



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PART 1

Purpose & Scope



Purpose

As we move into the next phase of Canada's coronavirus response, employers are gearing to reopen their doors and/or move employees back into the workplace.

But the rapidly evolving nature of COVID-19 means you're facing unique challenges you've never encountered before. The pandemic and its implications for reopening—physical distancing, employee relations, health and safety—can exacerbate the existing risks of operating a business.

Our goal is to provide you with a road map that will help you navigate the re-opening of your business, as well as support your organization as it readjusts to the "new normal".





Scope

Pinpoint the top risks that could affect your successful re-opening.	Explain how insurance can help you transfer some of your risk.	
Propose risk management strategies to mitigate your exposure.	Connect you to additional resources to help you address your risks, planning, and financial needs.	

Please note: The information provided herein is meant to supplement your existing research and is not exhaustive or a substitute for legal advice. Please consult a licensed insurance representative for information or advice on all insurance-related matters.





PART 2

Risk Management Strategies for Re-Opening



Key Consideration: Health & Safety

- As a Business Owner and an employer, you must adhere to strict workplace hygiene and physical distancing standards and provide safety training for staff.
- Until you can implement these safeguards, your business should remain closed.
- Keep in mind: all policies and protocols will need constant adjustment as we navigate our way through this pandemic. Routinely review and revise as needed. <u>Click</u> <u>here to learn more about the types of risks you will need</u> <u>to address.</u>

Please Note: We recognize that all workplaces, clients, and industries are unique and face different challenges. For more detailed information, please consult sector-specific and jurisdictional safety recommendations or seek legal counsel.





Key Consideration: Enhanced Employer Liability

Employers across Canada are obligated under various occupational health and safety legislations to take reasonable precautions to protect employee health and safety.



- Failure to comply with government orders can result in:
 - Workplace investigations;
 - Government fines and penalties; and
 - **Criminal prosecutions**, if an employer knowingly allowed their employees to work in unsafe conditions.
- Safety measures may not prevent COVID-19 transmission, but without them, employers also face civil liability risk if a client or employee contracts the virus through direct interaction with the business.



1. Consider Preliminary Steps



- Consult provincial legislation to determine if and when you can legally reopen.
- Determine who the **decision makers** are.
- Establish a designated **pandemic response team** or committee with members from key areas of the business for a coordinated response effort.
- Determine if you can reopen safely. Assess your workplace for **potential infection hazards.**
- Use scenario planning to think ahead. Account for all possible situations that may arise and identify critical compliance issues for your company and the industries you serve.
- Be prepared to implement and document disciplinary measures for non-compliance with safety protocols.



2. Make Policy and Contract Adjustments:

In addition to health and safety, you may need to make temporary revisions to other workplace policies that reflect the needs of your employees and business at this time. For all policies listed below, clearly indicate any special protocol and obligations for employees.

Sick Leave	Time Off	Business Travel	Remote Work	Job Contracts
 Eligibility for medical leaves of absence; Statutory leave; Paid or unpaid sick leave. 	 Paid or unpaid leave; Job protections; Vacation policy changes. 	 Travel restrictions; Approval processes; Employee refusal. 	 Work from home arrangements; Cybersecurity; Use of company equipment; Eligibility; Communication. 	 Temporary layoffs; Termination clauses; Changes to duties; Compensation and benefits; Work locations; Hours of work. Consult OH&S experts for legal risks.





3. Follow Best Practices for Recalling Employees

- Evaluate your needs to determine **who should return first**, unless they are high-risk.
- Consider recalling employees in the **reverse order** of their layoff dates so that those laid off first will return first.
- Document your reasoning to provide evidence of **non-discriminatory selection** in case you are later challenged.
- Confirm your jurisdictional requirements and act accordingly.
- Inform staff of any **changes**, **new measures**, **or expectations** for their return to work.
- Be alert to the potential for **discrimination** based on race, ethnicity, health information, or any other grounds and ensure all managers are trained to report and respond.



4. Make Accommodations Available

As long as employers have taken all reasonable precautions and met government safety requirements, employees must return to work. But many may be **unable or unwilling to return**.

Keep in mind: **employers cannot discriminate on the basis of family status or health and must accommodate to the point of undue hardship**. If so:

- Communicate **the steps you are taking** to address safety and help employees **feel comfortable** at work.
- Explore **alternatives** to address staff concerns case-by-case. (e.g. remote work, modified duties, flexible hours)
- **Be empathetic** to employees' needs and consider the nuances of their issues.
- Consider simply allowing employees to state they are uncomfortable returning to work without asking if this is due to age, health, transportation, or childcare—this may help avoid charges of discrimination.
- Be prepared for a possible rise in work refusals and formal workplace investigations from OH&S authorities. Do not threaten to discipline employees who refuse to work due to concerns of coronavirus contamination.





5. Communicate & Train

Transparency is key—trying to conceal risks can create more. Plus, all employees should understand their role when it comes to health and safety. Be sure to:

- Prepare daily or weekly COVID-19 news updates.
- Provide ongoing training on all safety response policies, including self-reporting requirements and consequences for failure to do so.
- Remind workers about sick leave, paid time off, and remote work policies and company-provided mental health services and/or wellness supports.
- Develop channels for employees to ask questions and provide feedback.





6. Implement Infection Control Procedures

Infection control is crucial for health and safety. While businesses are reopening, COVID-19 is still a reality we must contend with.

• For detailed information on physical distancing and sanitation measures, see **public health reports** or **PROLINK's online guide**.

Key Points:

- Where feasible, continue to limit face-to-face interactions.
- Notify all relevant third-parties about your COVID-19 policies.
- Deep clean the workplace before reopening. Set up a schedule to perform daily or weekly intensive cleans.
- Sanitize thoroughly and often with an appropriate cleanser. Pay attention to frequent touchpoints. <u>Click here for a list of</u> <u>disinfectants.</u>
- If you're considering PPE, train staff on proper fit, use, and care. For shared commercial office spaces, consult with building personnel on logistics. <u>Click here to find a list of sellers.</u>





7. Update Your Contracts with Clients if Appropriate

Many businesses are adding **COVID-19 related clauses** and/or waivers into contracts to address potential disruptions in performance in the future and/or new risks. When drafting contracts:

- Clearly define what constitutes an "excusable delay" and include parameters for notice of the delay and how long the delay will be.
- Seek **legal counsel** where appropriate for guidance on pandemic-specific clauses as they relate to your client.
- You can also watch PROLINK's webinar on COVID Contract Clauses for the:
 - <u>Technology Industry</u>
 - <u>Staffing & Recruitment Industry</u>
 - Design Industry





8. Review Your Insurance Needs with Your Broker





Professional Liability Insurance: Why do you need it?



- Clients are **unpredictable**. You can be sued just because a client is dissatisfied.
- Even if you're not guilty, you **still** have to defend.
- Everyone makes mistakes—even experts.
- You can protect your **finances**, your **business**, and your **reputation**.
- Small businesses are less likely to recover.
- Learn more here.



Commercial General Liability Insurance: Why Do You Need It?

- Commercial General Liability Insurance (CGL) defends you from third-party claims of bodily injury, illness or property damage caused by your work-related activities or on your premises.
- CGL is crucial if you own, rent, or lease office space or have a home-based business—Professional Liability and homeowner's policies won't cover a slip-and-fall.
- CGL also covers allegations of personal injury and slander, as well as false advertising.







Employment Practices Liability Insurance: Why do you need it?

- General liability and E&O Liability insurance **don't** cover employment matters.
- Even if you've followed all safety precautions—even if you're not guilty—**you still have to defend**.
- If you employ anyone other than yourself, you're at risk. Big or small, no business is immune.
- Small businesses are less likely to recover.
- Employees may be **more inclined** to file claims due to financial hardships caused by COVID-19.



9. Be Proactive



- **Keep current** with the news. Refer to reliable and frequently updated sources (government sites, public health).
 - <u>Canada's Advice for Business Owners</u>
 - Public Health Agency of Canada
- Be aware of legal and sector-specific requirements in your **jurisdictions**.
 - Provincial Guidelines
- Seek legal and/or <u>Occupational Health &</u> <u>Safety</u> counsel for specific concerns. Refer clients if needed.
- Maintain a complete record of all interactions with and services provided to clients. Inform clients that you will do so.
- Be flexible. Be prepared to **frequently review and update** your policies, advice, and deliverables as the circumstances change.





PART 3

Deep Dive: Cyber Crime & COVID-19



Key Consideration: The Rising Threat of a Privacy Breach



Over 28 million Canadians were affected by a privacy breach incident in 2019.



88% of Canadian businesses reported experiencing one cyberattack in 2019.



Small businesses are just as vulnerable—43% of cyberattacks target SMEs.

Cyberattacks are growing in frequency, intensity, and severity across the world.

Everyone's at risk.



Key Consideration: New Rules = New Risks for Canadian Firms

Under the **PIPEDA Digital Privacy Act**, when a breach poses a risk of significant harm you must notify:

- Affected individuals;
- The Privacy Commissioner of Canada.

As of November 1st, 2018:

- You must keep a record of all breaches even if there is no risk of significant harm for a minimum of 24 months AND
- The Privacy Commissioner may ask you to provide your records at any time or you may be called into legal proceedings.

If organizations fail to safeguard, retain, or dispose of personal information in their custody or fail to report a breach, they risk severe penalties for compliance violations.





Key Consideration: New Rules = New Risks for Canadian Firms (continued)

- The bad news? If you're found negligent in a data breach, you could be liable for up to \$100,000 in fines under PIPEDA.
- The really bad news? There's also all the additional costs of a data breach like:
 - Investigation, legal, and consulting fees;
 - Client notification costs and credit monitoring fees;
 - Business interruption costs.
- The really, really bad news? The loss of client trust and damage to your reputation could be irreparable.
 - Only 19% of Canadians said they would still do business with an organization if their data was exposed in a cyberattack.





Key Consideration: The Impact of COVID-19

Cybercriminals across the world are exploiting global fears to prey on worried populations, disrupted workers, and struggling businesses.



- Opportunist hackers can now access sensitive data through unsafe home Wi-Fi networks, unprotected devices, and corporate data centres strained by the surge of traffic.
- It is imperative for businesses to strengthen their existing defenses, protect data from exposure, and educate all employees on the potential cyber threats they face.



1. Beware of phishing & email fraud.



- Lookout for **suspicious or fear-mongering emails** from unknown senders.
- **Don't click** on attachments or forward them to family or friends.
- Verify **sender authenticity** by checking the email address, but don't click on any links.
- Be wary of any websites that start with "coronavirus" or "COVID"—many hackers have already registered these domain names.
- Train employees to spot and report phishing.
- Heighten email security protocols with advanced threat protection (ATP) to detect malware immediately.
- Consider caution banners for all emails received from external sources and verbal authentication procedures for email requests involving payment information or sensitive data.
- Click here for additional tips.





2. Implement Security Safeguards

- Use proper safeguards for **all** networks, systems, and devices. (e.g. firewalls, passwords, software, whitelisting)
- Use multi-factor authentication and lockout features for **multiple incorrect login** attempts.
- Ensure all **security patches** are up-to-date.
- Limit and monitor remote access to applications, content, and sensitive databases.
- **Backup data** to a secure central location daily and ensure that IT routinely tests backups.
- Only communicate via email if you have a **secure, encrypted connection**. If not, obtain consent over the phone before proceeding.
- Schedule forced password changes every 60-90 days.
- Here are the top reasons to implement a VPN.
- Click here for tips on video conferencing and webcam security.



3. Review your Policy Surrounding Personal Devices

- Review your organization's remote work and Bring Your Own Device (BYOD) policies.
- Use proper security safeguards for all devices.
 - Antivirus software, encryption software, secure firewalls, passwords, multi-factor authentication.
- Confirm that you **can remotely disable or wipe** a device connected to your network if lost or stolen.
- **Restrict** family and friends' access to your device.
- Configure devices with **an inactivity timeout function** that requires re-authentication to access.
- Encrypt your data so that it can only be read by certain people. This can easily be turned on in the privacy settings of your device.
 - For more detailed instructions, visit: <u>https://spreadprivacy.com/how-to-encrypt-devices/</u>





4. Communicate & Train

Provide awareness messaging on:

- How to keep software up-to-date (like anti-virus protections) and why it's important;
- How to use remote-working solutions, like VPN and remote desktops;
- How to **report** any problems, particularly security issues;
- COVID-19-related **cybersecurity threats**, like phishing attacks, fraudulent websites, and scam campaigns;
- Best practices for **storing**, **handling**, **and sharing** confidential information when working remotely;
- Training on any **revised policies and practices** where required.
- Click here to learn more.





5. Review your privacy breach incident response plan.



Confirm:

- Contact details and alternative contact details for all key stakeholders if unavailable due to illness;
- Named alternates for all incident management team members;
- Whether your **cyber insurance policy** includes coverage for remote working access management and use of personal devices;
- If any of your **key external service providers** (i.e. lawyers, forensics, first responders) are unavailable due to COVID-19.



6. Watch Out For Clouds

- Cloud-based applications and services can create risk around: security, compliance, employee inexperience, and vendor lock-in;
- "The Cloud" creates a false sense of security. Be sure to weigh the potential drawbacks alongside the benefits;
- Be careful to avoid misconfiguration, employee error, and the mishandling of your customer data;
- <u>See PROLINK's white paper on balancing the</u> <u>benefits and risk of using cloud-based services.</u>





7. Consider Cyber Liability Insurance

- No matter how careful you are, sometimes a privacy breach is **unavoidable**. But it's not **unmanageable**.
- Cyber Insurance can get you access to:
 - A forensic investigations team to determine the problem and how to fix breach;
 - A legal privacy breach coach to help you notify the privacy commissioner and navigate privacy laws;
 - Funds to set up credit monitoring and notification;
 - PR consulting to help manage your reputation;
 - Ransomware attacks and payments.





Cyber Insurance: Why Do You Need It?

- Cyber Insurance can provide defence of lawsuits brought against you and your company by individuals or organizations affected by a privacy and/or data breach.
- Cyber Insurance provides access to experienced defense lawyers.
- The legal costs you incur are covered;
- Damages and settlements you are required to pay to a third party are covered;
- Watch our video to learn more.





PART 4

Business Continuity Planning



Key Consideration: Directors & Officers Liability

A chief responsibility of being a Director or Officer is the **duty of oversight.**

Directors and officers must attempt to implement **a reasonable system for monitoring and reporting** the company's central compliance risks. Failure to do so increases the risk of D&O liability.



- The threat of corporate insolvency looms large with both declines in revenue and surges in health and safety costs.
- As the Director or Officer of a firm, if your organization slows or ceases operations, you could face blame for pandemic-related decisions leading to closure (i.e., creditors, employees, clients).


1. Assess Your Financial Risk

- Analyze your client risk profiles. How exposed are they, and what does their ability to survive the crisis look like?
- Control your Accounts Receivables risk. Look for more payment upfront, shorter payment terms, and control outstanding debt;
- Be more diligent with credit-checking new clients;
- Be aware of your contractual obligations.





2. Brace Your Supply/Distribution Chain for Disruption

- Monitor geographic risks based on outbreaks and government actions;
- Stay informed on any travel restrictions and import/export restrictions. Ensure employees have Travel Insurance coverage for COVID-19 before leaving Canada.
- Observe the political climate and risk in various jurisdictions as the pandemic continues to evolve;
- Maintain awareness of government initiatives intended to ease financial stress for businesses;
- Engage alternative suppliers as-needed, and determine if you have an opportunity to gain new clients or market share.





2. Create Business Continuity Plans

- Evaluate how the work of your company might be changed and modify accordingly. <u>Click here to learn about the types of risks you should consider.</u>
 - Include your entire network (contractors, partners, vendors, etc.) in these plans. Continue to postpone or virtually conduct non-essential work, activities, and appointments.
- Establish an **infection prevention and control plan** based on your environment and public health directives.
 - Include: operational changes; physical distancing and sanitation; and protocols in case an employee is exposed to, positive, or presumed-positive for COVID-19.
- Adopt a **tailored approach** based on local context for multiple offices. Develop **flexible resourcing strategies** in the event of a staffing shortage.
 - (e.g. flexible hours, outsourcing, cross-training, redeployment)
- Confirm critical roles and **back-up plans** in case key executives are temporarily unavailable.
- Document all COVID-19-related **deliberations**, **decisions**, **and actions**—this will be critical in case of an audit.
- Here is a guide that may help you create your plan. or click here for additional templates from BDC. Seek expert opinion for additional review.





3. Promote Transparency & Understand Risk

- Review and adjust corporate governance protocols.
- Ensure that management is properly **directed and equipped** to address challenges facing the company.
- Frequently schedule (virtual) **board meetings**, with time dedicated to COVID-19 concerns.
- Ensure that all corporate records are **current and wellmaintained**.
 - (e.g. pandemic-related matters, rationale for key decisions, information cited to make decisions, any dissents)
- Ensure that the **company's financial reporting and payment systems** are operating without error and that reports are regularly reviewed to monitor key numbers.
- Ensure that the board is **routinely updated** on the company's operations, financial performance, and legal compliance.
- Obtain appropriate professional advice (legal and OH&S).





4. Implement a Protocol for Managing Positive Cases

Any cases of COVID-19 transmission **must be documented and reported to provincial health authorities**. Follow any orders issued in response.



- Cordon off and disinfect all affected areas and equipment. Shutdown until you can do so if necessary.
- Inform all potentially infected individuals and require them to self-isolate and monitor their symptoms for a period of 14 days or until tested negative.
- Ensure all COVID-19 related personal information is kept confidential. Do not disclose the identity of the infected individual(s) to anyone except senior management.



5. Consider D&O Insurance

- Defends Directors, Officers, and employees if they are held **personally liable** for any actual or alleged wrongful acts in managing a company;
- Protects the personal assets of Directors and Officers, and their spouses and estates;
- Often comes bundled with Employment Practices Liability Insurance and Fiduciary Liability;
 - **Fiduciary Liability:** Protects insured parties against errors or omissions in the management or administration of employee benefits plans.





D&O: What's Covered?

Side A: D&O Liability Coverage

 Insures individual Directors and Officers against losses the organization is not legally or financially capable to cover (personal asset protection).

Side B: Corporate Reimbursement Coverage

 Protects corporate assets and reimburses organizations for expenses incurred when defending Directors and Officers and the entity. (e.g. balance sheet protection)

D&O: Who's Covered?

- Past, present, future, and non-executive Directors;
- Employees in a managerial or supervisory capacity;
- Shareholders and investors;
- Supervisory board;
- The corporation;



D&O Insurance: Why do you need it?



- Today's society places a harsh spotlight on corporate practices. Companies are being held accountable more than ever before.
- Aggressive lawyers looking to capitalize on heightened public sentiment against larger businesses and corporations are taking **more claims to trial**. A concern for your clients.
- Drawn out litigation leads to increased defence costs for businesses.
- Your company may not be able to reimburse directors for your costs incurred and losses.
- Past and present employees can be unpredictable and aggressive.



PART 5

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Overview of Government Financial Resources for Business Owners



Government Support For Small Businesses

The Business Development Bank of Canada (BDC) and Export Development Canada (EDC) are offering support for small businesses through:

- 1. Small Business Loans: Loans of up to \$100,000 to buy equipment, software or cover other business expenses. Businesses can postpone capital payment for the first six months, and repay the loan over four years.
- 2. Working Capital Loans: Loans of more than \$100,000 for working capital to: increase inventory to meet demand or leverage discounts offered by suppliers. Payments can mimic your cash flow patterns, and no personal assets will be taken as collateral.
- **3.** Purchase Order Financing: cover up to 90% of PO amounts for larger sales.

As of June 26, 2020, sole proprietors, businesses who use contractors, and businesses who pay themselves in dividends can also access the Canada Emergency Business Account (CEBA) for a loan of up to \$40,000 for non-deferrable expenses. Learn more here.

HOW TO APPLY:

SMALL BUSINESS LOANS:

https://www.bdc.ca/en/financing/pages/s mall-business-loans.aspx

WORKING CAPITAL LOANS:

https://www.bdc.ca/en/financing/businessloans/working-capitalfinancing/pages/working-capital-loan.aspx

PURCHASE ORDER FINANCING:

https://www.bdc.ca/en/financing/businessloans/pages/purchase-order-financing.aspx



Canada Emergency Wage Subsidy (CEWS)



- Federal government implemented a 75% wage subsidy for employee wages in the private sector. The government has announced an intent to keep this support measure until December 19, 2020.
- Intended for businesses that are able to show a drop in revenue of 30%, although the government proposed to include businesses with smaller revenue drops on July 17, 2020 (though this has not yet been confirmed).
- Learn more about the proposed changes here.
- <u>Click here to read about eligibility criteria,</u> <u>application requirements, and more.</u>
- <u>Click here to learn more about Canada's</u> <u>Economic Response Plan.</u>



Employment Insurance

Employment Insurance (EI):

- FOR? Employees that do not have paid sick leave, and are: sick, quarantined, or caring for others.
- HOW? Employees can apply anytime. They do not have to wait a week or provide a medical certificate at this time.

El Work-Sharing (El WS) Program:

- FOR? Employees who agree to reduce normal working hours as a result of circumstances beyond the control of their employer are eligible for El benefits up to 76 weeks.
- HOW? Before the employee applies, the employer must review the <u>Application Guide</u>. You will have to complete forms <u>EMP5100</u> and <u>EMP 5101</u>, <u>Work-Sharing Unit</u> <u>Attachment "A,"</u> as well as include a detailed recovery plan.

HOW TO APPLY:

EMPLOYMENT INSURANCE:

<u>https://srv270.hrdc-</u> <u>drhc.gc.ca/AW/introduction?GoCTemplateCulture=en-CA</u>

EI WS PROGRAM:

Additional Details:

https://www.canada.ca/en/employment-socialdevelopment/services/work-sharing/notice-covid-19.html#h2.04

Completed Applications Sent To:

- Atlantic Provinces: <u>esdc.tp-atl-ws-tp.edsc@servicecanada.gc.ca</u>
- Quebec: EMAIL: <u>gc-dpmtds-lmsdpb-tp-ws-</u> gd@servicecanada.gc.ca
- Ontario: esdc.on.ws-tp.on.edsc@servicecanada.gc.ca
- Western Canada and Territories: <u>edsc.wt.ws-</u> <u>tp.esdc@servicecanada.gc.ca</u>



Emergency Benefits For Those Not Eligible For El

Canada Emergency Response Benefit: up to \$2000 monthly, for up to 6 months.

- FOR? Workers, including self-employed, who are: sick, quarantined, caring for others sick with COVID-19 who do not qualify for EI benefits. AND, Parents with children who require supervision due to school closures, and cannot earn employment income, regardless of if they qualify for EI or not and workers not eligible for EI who are facing unemployment or reduced hours as a result of COVID-19 business impact.
- HOW? Canadians will receive this assistance approximately 10 days after applying. Only apply for the CERB through either Service Canada or the Canada Revenue Agency (CRA).

LEARN MORE:

GOVERNMENT: <u>https://www.canada.ca/en/services/benefi</u> <u>ts/ei/cerb-application.html</u>





PART 6

What if You Have to Close Your Business Again?



Tips for Securing Vacant Properties

- The pandemic situation continues to evolve rapidly. At this point, it is impossible to tell how long it will last—or how many lockdowns we may have to endure.
- Should your business have to close down again, we suggest following the steps indicated in <u>this checklist</u> for securing your physical property.
- If you maintain a property insurance policy, ensure that you inform your broker of any properties that will be left vacant for more than 30 consecutive days—as coverage in this case is typically excluded.
 - Your broker will be able to advise you on your insurer's specific policy surrounding vacant properties.







Questions?

Contact your PROLINK Account Manager or:

- CALL: <u>1 800 663 6828</u>
- EMAIL: info@prolink.insure
- VISIT: prolink.insure

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